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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

VAHAN NAZARIAN,

Defendant and Appellant.

B205765

(Los Angeles County
Super. Ct. No. GA063665)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Jacqueline H. Nguyen, Judge. Affirmed with modification.

Peter Knecht for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A.
Taryle and Douglas L. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Vahan Nazarian, appeals from his conviction for willful, deliberate and premeditated attempted murder (Pen. Code,¹ §§ 187, subd. (a), 667) and the findings that he personally used a deadly weapon and inflicted great bodily injury. (§§ 12022, subd. (b)(1), 12022.7, subd. (a).) Defendant argues: there was insufficient evidence to support his conviction; the prosecutor improperly granted immunity to Emma Nazarian; the prosecutor committed misconduct; and the trial court improperly denied his new trial motion. We affirm with a minor modification.

II. FACTUAL BACKGROUND

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) This case involves the November 5, 2005 stabbing of defendant's stepson, James Farrohk-Shahab. Mr. Farrohk-Shahab's parents divorced when he was seven years old. Thereafter, his mother, Emma Nazarian, married defendant. However, they lived apart and kept their marriage a secret from Mr. Farrohk-Shahab and defendant's three sons. Mr. Farrohk-Shahab first learned of his mother's remarriage when he was 12 or 13 years old. Mr. Farrohk-Shahab preferred not to live with defendant. Defendant degraded and treated Mr. Farrohk-Shahab cruelly. Mr. Farrohk-Shahab lived in Las Vegas and Maryland with family members. Mr. Farrohk-Shahab's natural father was also abusive. Mr. Farrohk-Shahab graduated from high school while living with an aunt and uncle. The uncle was Dr. Mohammed Shahab. Mr. Farrohk-Shahab looked upon Dr. Shahab as a father figure.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Mr. Farrohk-Shahab attended California State University at Northridge and lived in the dormitory and fraternity house. In 1999, Mr. Farrohk-Shahab transferred to Fresno State University, where he studied for two and one-half years. Mr. Farrohk-Shahab received financial aid and monetary assistance from his mother. Mr. Farrohk-Shahab graduated in 2001 with a bachelor of arts degree in history with a minor in anthropology. While a student at Fresno State, Mr. Farrohk-Shahab was convicted of petty theft. Mr. Farrohk-Shahab then began graduate school at California State University at Northridge. Mr. Farrohk-Shahab moved into his mother's home in Glendale at that time. Mr. Farrohk-Shahab rarely saw defendant at the residence. Mr. Farrohk-Shahab spent a significant time at school and defendant rarely came home. Defendant came home for a few hours each evening, but only stayed overnight on the weekends. Mr. Farrohk-Shahab tried to avoid defendant. Mr. Farrohk-Shahab testified, "[Defendant] always treated me like . . . a dog . . . so the few hours that I knew he would be home, I would try to avoid being at home during those couple of hours a day." According to Ms. Nazarian, defendant was not angry when Mr. Farrohk-Shahab moved into the family residence. But she testified, "[H]e wasn't told that he was coming to stay there." Defendant also maintained a home in Sun Valley, California. Defendant did not pay for Mr. Farrohk-Shahab's living expenses. However, defendant paid the car insurance premiums for Mr. Farrohk-Shahab and Ms. Nazarian. Defendant also paid the car insurance premiums for his own sons. At one point, Mr. Farrohk-Shahab was involved in an automobile accident and his car was a total loss. After the accident, defendant stopped paying Mr. Farrohk-Shahab's car insurance premiums.

Adrian Mandujano was friend of Mr. Farrohk-Shahab. Mr. Mandujano visited Mr. Farrohk-Shahab three times each week at Ms. Nazarian's home. Mr. Mandujano would visit after defendant had left the house. If defendant was present, Mr. Mandujano and Mr. Farrohk-Shahab would meet him outside the Nazarian residence. Despite the difficulties with defendant, Mr. Farrohk-Shahab was very close to Ms. Nazarian and spoke to her daily by cellular phone.

On March 17, 2005, Ms. Nazarian became ill while out shopping with Mr. Farrohk-Shahab. Mr. Farrohk-Shahab initially began driving his mother to the hospital in his Accord automobile. However, when Mr. Farrohk-Shahab's car overheated, they returned home. Mr. Farrohk-Shahab then drove Ms. Nazarian to the hospital in her Mercedes. When Mr. Farrohk-Shahab learned that his mother would be kept overnight for tests, he left. While in the hospital parking lot, Mr. Farrohk-Shahab telephoned defendant and explained that Ms. Nazarian was in the hospital. Defendant immediately called Mr. Farrohk-Shahab back. Defendant screamed over the phone, "Where's my wife you little fucker?" Mr. Farrohk-Shahab hung up. Defendant called Mr. Farrohk-Shahab back. Defendant instructed Mr. Farrohk-Shahab to get to the house immediately. Also in the conversation, defendant used profanity and threatened Mr. Farrohk-Shahab. Mr. Farrohk-Shahab described one of the threats, "That he was going to kick my ass."

Mr. Farrohk-Shahab telephoned Mr. Mandujano. Mr. Farrohk-Shahab asked Mr. Mandujano to meet at the Nazarian residence. Mr. Farrohk-Shahab explained: "I wanted someone to be there in case [defendant] tried to do something to me. [¶] . . . I just was kind of stressed out. My mother was sick. I just kind of needed a friend. And besides that, I just figured with all the threats [defendant] was saying to me, it would be smarter to have somebody there, just in case." When Mr. Mandujano arrived, Mr. Farrohk-Shahab drove Ms. Nazarian's car to the home of another friend. At approximately 10:30 p.m., defendant arrived at the hospital. Defendant took Ms. Nazarian home at approximately 11 or 11:30 p.m. Around midnight, defendant left the Nazarian residence.

When Mr. Farrohk-Shahab and Mr. Mandujano drove back to the Nazarian residence after midnight, they saw defendant driving. Mr. Farrohk-Shahab decided to evade defendant. However, Ms. Nazarian telephoned Mr. Farrohk-Shahab from her home. Ms. Nazarian told Mr. Farrohk-Shahab to come home immediately. Mr. Farrohk-Shahab was unaware that his mother had returned from the hospital. Defendant had returned and parked in the driveway of his residence. As Mr. Farrohk-Shahab pulled up near the curb, he attempted to close the convertible top. Defendant stood next to the

driver's side and began punching Mr. Farrohk-Shahab in the face. Mr. Farrohk-Shahab was still restrained by his seatbelt. The engine of the automobile was still running and the car was still in drive. Ms. Nazarian came outside and saw defendant repeatedly hitting Mr. Farrohk-Shahab. Ms. Nazarian ran to the car and tried to put herself between defendant and Mr. Farrohk-Shahab. Mr. Farrohk-Shahab tried to protect himself from the blows by raising his hands to his face. Defendant struck Mr. Farrohk-Shahab at least eight times in the head with a closed fist.

Eventually, Mr. Mandujano got out of the car. Defendant stepped back. Mr. Farrohk-Shahab was then able to get out of the car. However, the car began to roll. Ms. Nazarian got into the car and set the brake. Defendant again hit Mr. Farrohk-Shahab as they stood in the middle of the street. Mr. Farrohk-Shahab described what happened next: "I kind of grabbed him, almost like you would palm a ball, towards his face and pushed him back." Mr. Farrohk-Shahab pushed on the top of defendant's head. Defendant continued to strike at Mr. Farrohk-Shahab. Mr. Farrohk-Shahab eventually punched defendant. After the punch, Mr. Farrohk-Shahab, Ms. Nazarian, and Mr. Mandujano came to defendant's aid. Ms. Nazarian called the police.

Soon thereafter, the police arrived. Mr. Farrohk-Shahab spoke to the police. Ms. Nazarian overheard the conversation with the police. Mr. Farrohk-Shahab testified Ms. Nazarian said, "[I]f I press charges on my stepfather, she would never speak with me again." Mr. Farrohk-Shahab then requested that no charges be filed against defendant. Glendale Police Officer Fernando Salmeron interviewed Ms. Nazarian at the scene. Officer Salmeron testified Ms. Nazarian was afraid defendant would kill Mr. Farrohk-Shahab, "[I]f [Mr. Farrohk-Shahab] came home, [defendant] was going to kill him." Defendant was taken to a hospital for treatment. Mr. Farrohk-Shahab and Mr. Mandujano drove Ms. Nazarian to the hospital to be with defendant.

Mr. Farrohk-Shahab then returned home. Early the next morning Mr. Farrohk-Shahab and Mr. Mandujano were awakened by defendant's son, Andre Nazarian,² who was pounding on the front door. Andre was yelling: "I'm going to kick your ass. If anything happens to my dad, I'll kill you." Andre then attempted to break in by pounding on a sliding glass door in the kitchen. Mr. Farrohk-Shahab asked Andre to calm down and to leave several times. At first, Andre refused to leave. Mr. Farrohk-Shahab threatened to call the police. Andre went to his truck. Mr. Farrohk-Shahab feared that Andre would return with a weapon. Mr. Farrohk-Shahab called the police. Mr. Farrohk-Shahab requested that charges be pressed against Andre. But to Mr. Farrohk-Shahab's knowledge, no charges were filed against Andre.

A few days later, Ms. Nazarian told Mr. Farrohk-Shahab that he must move out of her home. This was because defendant did not want Mr. Farrohk-Shahab to reside there any longer. Also, Mr. Farrohk-Shahab testified his mother gave an additional reason for the move, "Because [defendant] said he would divorce her if I was still there." Ms. Nazarian rented an apartment for Mr. Farrohk-Shahab. Mr. Farrohk-Shahab returned to the Nazarian residence home only on occasions when it could be verified defendant was not at home. Mr. Farrohk-Shahab continued to have frequent telephone conversations with his mother between April and November 2005. Ms. Nazarian supported Mr. Farrohk-Shahab financially. Mr. Farrohk-Shahab borrowed \$50,000 in financial aid when he began a doctoral pharmacy program at the University of Southern California in August 2005. Mr. Farrohk-Shahab never asked defendant for money.

Mr. Farrohk-Shahab was afraid to go to the Nazarian residence when defendant was present. When asked why, Mr. Farrohk-Shahab testified, "I feared for my life." Ms. Nazarian wanted to see Mr. Farrohk-Shahab on his 26th birthday, November 6, 2005. However, on November 6, 2005, Mr. Farrohk-Shahab had to study for a mid-term

² Andre Nazarian will be referred to by his first name for purposes of clarity.

examination. Mr. Farrohk-Shahab suggested to his mother they meet on November 5, 2005, so they could go for a walk. Ms. Nazarian warned Mr. Farrohk-Shahab that defendant was home. Mr. Farrohk-Shahab said that he would call Ms. Nazarian when he arrived outside her home. On November 5, 2005, after parking in front of her home, Mr. Farrohk-Shahab attempted to call Ms. Nazarian on her cellular phone but was unsuccessful. Mr. Farrohk-Shahab did not usually call Ms. Nazarian on the home phone for fear defendant would answer. Mr. Farrohk-Shahab reached his mother on her home phone and told her he was waiting outside. Mr. Farrohk-Shahab stood near the curb as his mother came out of the house. As it was cool, Ms. Nazarian went back inside to get a sweater or a sweatshirt.

Mr. Farrohk-Shahab walked up to the front porch. Mr. Farrohk-Shahab saw through the window that defendant was seated on a couch inside watching television. Ms. Nazarian put out some fruit and a paring knife for defendant. When Ms. Nazarian came back outside, she and Mr. Farrohk-Shahab turned to walk down the walkway.

Defendant suddenly opened the front door. Mr. Farrohk-Shahab described what happened next: “And [defendant] came out and started screaming profanities to me. Telling me he’ll kick my ass and he’ll kill me.” Mr. Farrohk-Shahab turned around and responded: “I have nothing to prove. And this is ridiculous.” Defendant went back inside the residence. As Mr. Farrohk-Shahab and Ms. Nazarian began walking down the sidewalk, defendant ran out of the house. Defendant ran towards Mr. Farrohk-Shahab. Defendant had his right hand “cocked back” in a fist. Mr. Farrohk-Shahab turned and ran toward defendant. Defendant’s extended right hand stuck Mr. Farrohk-Shahab. Mr. Farrohk-Shahab was struck on the left side of his torso beneath the place where his shirt pocket was located. As this was occurring, Mr. Farrohk-Shahab simultaneously struck defendant. At first defendant stumbled but then ran at Mr. Farrohk-Shahab again. Mr. Farrohk-Shahab held defendant’s head in an effort to avoid being struck. Mr. Farrohk-Shahab then pinned defendant to the ground. Mr. Farrohk-Shahab hit defendant again. Mr. Farrohk-Shahab then got up. Defendant ran into the house.

Mr. Farrohk-Shahab went to the middle of the street in an effort to get as far away as possible. Mr. Farrohk-Shahab feared that defendant would retaliate. Ms. Nazarian told Mr. Farrohk-Shahab to get into the house. Ms. Nazarian stated, “He’s going to get a knife and try to kill [you].” Mr. Farrohk-Shahab refused to go into the residence. Mr. Farrohk-Shahab testified he told Ms. Nazarian why he refused to go into the residence, “Because I told her he’ll try to kill me.”

Ms. Nazarian went into the house. Ms. Nazarian heard defendant rummaging through a kitchen knife drawer. Ms. Nazarian told defendant that whatever he planned to do he better kill her before going outside. Ms. Nazarian saw a large knife, approximately 12 inches in length, on the kitchen counter above the open knife drawer at the time. Mr. Farrohk-Shahab could see through the open front door that defendant had gone into the kitchen. Thereafter, Mr. Farrohk-Shahab heard the sound of kitchen drawers opening and the clang of metal. Mr. Farrohk-Shahab heard Ms. Nazarian scream, “You will have to kill me first.” Mr. Farrohk-Shahab feared for his mother’s safety.

Mr. Farrohk-Shahab called the police on his cellular phone using a loud voice in an effort to get the neighbors’ attention. A tape recording of the emergency call was played for the jurors at trial. At the time, Mr. Farrohk-Shahab did not realize that he had been stabbed. Defendant also telephoned the police while inside the house. A tape recording of defendant’s call was also played for the jurors. Defendant told the police: “[A] guy came by my house and beat me up. He’s still here. He pulled a knife on me.” When asked what the suspect looked like, defendant told the emergency operator, “He’s Asian.” Defendant did not identify Mr. Farrohk-Shahab as the assailant in the telephone conversation with the emergency operator.

When the police arrived, defendant continued to advance toward Mr. Farrohk-Shahab. Sergeant York Tsurata directed Mr. Farrohk-Shahab to sit on the neighbor’s porch across the street. Mr. Farrohk-Shahab told Sergeant Tsurata, “I’m the one who called.” Mr. Farrohk-Shahab then sat on the porch as directed and was polite and compliant. Defendant continued to advance toward Mr. Farrohk-Shahab. Sergeant

Tsurata commanded defendant to stop. Defendant was ordered to place his hands up several times. Eventually, Sergeant Tsurata tackled defendant. Another arriving officer, Chad McDonald, assisted in restraining defendant. Paramedics treated defendant for a wound on his forehead. Sergeant Tsurata later overheard Ms. Nazarian say that defendant had grabbed a kitchen knife. Ms. Nazarian consented to the officers' taking possession of the knife.

Officer McDonald interviewed Ms. Nazarian while defendant was being treated by paramedics. Ms. Nazarian was very upset, crying, and appeared embarrassed by what had occurred. Ms. Nazarian told Officer McDonald that Mr. Farrohk-Shahab had wanted to see her on November 5, 2005. Mr. Farrohk-Shahab's birthday was the following day. Ms. Nazarian stated she and Mr. Farrohk-Shahab were standing in front of the house talking. Defendant then came to the door and began to yell profanities as if to instigate a fight. Defendant said to Mr. Farrohk-Shahab, "You bastard, I'll kick your ass." Defendant ran down the steps directly at Mr. Farrohk-Shahab. As he ran, defendant said, "I'll kick your ass, you son of a bitch." Defendant began striking Mr. Farrohk-Shahab with a closed fist several times. Ms. Nazarian told Officer McDonald that defendant struck Mr. Farrohk-Shahab several times. Thereafter, Mr. Farrohk-Shahab took defendant to the ground. Mr. Farrohk-Shahab climbed on top of and struck defendant twice with a closed fist. Mr. Farrohk-Shahab then got up and walked away. Ms. Nazarian saw defendant get up and run into the house. When Ms. Nazarian followed defendant into the house, she saw him grab a large kitchen knife from a drawer. Ms. Nazarian said she feared defendant would harm Mr. Farrohk-Shahab. Ms. Nazarian told defendant, "You'll have to kill me first to get to him." Defendant then placed the knife on the counter and walked out. According to Officer McDonald, Ms. Nazarian described a threat by defendant, "She told me that [defendant] told her if he comes around here again, I'll kill him."

Sergeant Tsurata spoke with Mr. Farrohk-Shahab. While they were talking, Mr. Farrohk-Shahab realized that he had blood on his shirt. When Mr. Farrohk-Shahab lifted

his outer shirt, he found his undershirt bloody. Thereafter, Mr. Farrohk-Shahab lifted his undershirt to find his torso bleeding. Mr. Farrohk-Shahab declined an offer of medical treatment. Sergeant Tsurata suggested that the paramedics return to the scene. However, Mr. Farrohk-Shahab said he was fine and just wanted to go home as he was upset. Mr. Farrohk-Shahab went into the Nazarian residence. Mr. Farrohk-Shahab and his mother dressed the wound with an Armenian remedy and bandage. Mr. Farrohk-Shahab declined his mother's offer to take him to the emergency room. Mr. Farrohk-Shahab took a photo of his wound with his cellular phone to document what had happened.

Mr. Farrohk-Shahab went outside to see if he could find the stabbing implement. Using his cellular phone for lighting, Mr. Farrohk-Shahab looked near the area where the altercation occurred. Mr. Farrohk-Shahab found a black steak knife in the grass. The knife had red on the serrated edge. Mr. Farrohk-Shahab gave the knife to Ms. Nazarian. The knife appeared to be the same one Ms. Nazarian had given to defendant to cut the fruit. However, the knife Mr. Farrohk-Shahab found was bent. It had not been bent when Ms. Nazarian gave the knife to defendant. Ms. Nazarian wrapped the knife in paper and put it away in a drawer. Mr. Farrohk-Shahab's shirts were thrown in the trash.

Defendant was interviewed by Officer McDonald. While seated in the backseat of a police car, defendant was advised of and waived his constitutional rights. Officer McDonald described defendant's statement: "He told me that when he found out that [Mr. Farrohk-Shahab] was standing in front of the house, he was upset and he walked to the front door and asked [Mr. Farrohk-Shahab] to leave. . . . [¶] He said Mr. Farrohk-Shahab made a smart ass remark and he asked him to leave several more times. And [Mr. Farrohk-Shahab] didn't leave." According to Officer McDonald, defendant described the fight thusly: "[H]e approached him and began striking him with a closed fist. [Mr. Farrohk-Shahab] then took him to the ground, climbed on top of him, and struck his several times, causing the laceration above his eye." Officer McDonald described defendant's explanation of what occurred after the fight ended: "After [Mr. Farrohk-Shahab] struck him, he stood up and walked away. He was upset that they were just

involved in an altercation and that [Mr. Farrohk-Shahab] was still around. So he got up and ran into the house.” Thereafter, while in the residence, defendant admitted grabbing a knife. Defendant said when he heard Ms. Nazarian say “You’ll have to kill me first” he put the knife on the counter.

Before she went outside following the fight, Ms. Nazarian had telephoned Ofik Davoodian. Ms. Davoodian is Ms. Nazarian’s sister. Ms. Davoodian was also distantly related to defendant. Ms. Davoodian is married to Herach Mansoori. Ms. Nazarian asked them to come to her residence. When Ms. Davoodian and Mr. Mansoori arrived at the Nazarian home, defendant was inside the police car. Later, Mr. Farrohk-Shahab came to the kitchen and told them, “This is where he has hit me with a knife.” Ms. Davoodian testified that the wound was small. Ms. Davoodian and Ms. Nazarian cleaned and bandaged Mr. Farrohk-Shahab’s wound. Thereafter, Mr. Farrohk-Shahab left the house briefly. Mr. Farrohk-Shahab returned a few minutes later. Mr. Farrohk-Shahab showed Ms. Davoodian, Mr. Mansoori, and Ms. Nazarian a knife. Mr. Farrohk-Shahab said he found the knife on the ground. Ms. Nazarian grabbed the knife from Mr. Farrohk-Shahab, wrapped it in a paper towel, and placed it in a kitchen drawer. Ms. Nazarian threw Mr. Farrohk-Shahab’s bloody shirts into the trash.

Mr. Farrohk-Shahab decided to leave the house. Mr. Farrohk-Shahab began driving to the home of a friend, Philip Wasem, in Lawndale. Mr. Farrohk-Shahab encountered traffic while driving. Mr. Farrohk-Shahab began to feel cold wetness under his shirt. Mr. Farrohk-Shahab touched the area and found his wound was leaking blood. Mr. Farrohk-Shahab called Mr. Wasem and said: “I’m leaking blood, bro. I need you to look up the nearest emergency room. I’m on my way to your house. When I get there, I need you to take me.” Mr. Wasem met Mr. Farrohk-Shahab. Mr. Farrohk-Shahab’s shirt and undershirt were both soaked in blood. Mr. Farrohk-Shahab was somewhat frantic. Mr. Wasem drove Mr. Farrohk-Shahab to the UCLA Harbor Medical Center, arriving after midnight. Mr. Farrohk-Shahab was taken into surgery and remained overnight at the hospital. Mr. Farrohk-Shahab was released from the hospital and picked up by Ms.

Nazarian. Mr. Farrohk-Shahab was confined to home and given painkillers for approximately three weeks following the surgery. Mr. Farrohk-Shahab was required to go for daily medical treatment for three weeks because his wound did not heal properly. At the time of trial, Mr. Farrohk-Shahab had a scar from the stab wound. Mr. Farrohk-Shahab testified that he continued to suffer residual health problems as a result of the stab wound.

Glendale Police Training Agent Tracey Lowrey was an investigator assigned to this case. Agent Lowrey spoke with Mr. Farrohk-Shahab about what had occurred. Agent Lowrey served a search warrant on the Nazarian residence on November 15, 2005. Ms. Nazarian was present at the time. Agent Lowrey hoped to recover the small knife and Mr. Farrohk-Shahab's undershirt. Mr. Farrohk-Shahab had told Agent Lowrey that he taken the undershirt off and it had been thrown out.

Agent Lowrey interviewed Ms. Nazarian. Ms. Nazarian said Mr. Farrohk-Shahab had come to her home on November 5, 2005 because it was his birthday. Mr. Farrohk-Shahab waited on the front porch while Ms. Nazarian went to get a sweater. Defendant and Mr. Farrohk-Shahab exchanged angry words. Mr. Farrohk-Shahab told defendant, "You'd better treat her well." Mr. Farrohk-Shahab and Ms. Nazarian started to leave. Then, defendant ran after Mr. Farrohk-Shahab. Defendant struck Mr. Farrohk-Shahab. Thereafter, Mr. Farrohk-Shahab struck defendant. Mr. Farrohk-Shahab tried to leave. Ms. Nazarian wanted to get them all back in the house. Defendant went into the kitchen and picked up a kitchen knife. Ms. Nazarian was very hesitant while speaking with Agent Lowrey. Ms. Nazarian told Agent Lowrey that defendant had taken a large kitchen knife from the drawer. Ms. Nazarian stepped in front of defendant and said, "You will have to kill me before you kill my son." Defendant put the knife down.

Agent Lowrey asked Ms. Nazarian where the bloody shirts Mr. Farrohk-Shahab wore that evening were located. Ms. Nazarian said they had been thrown out in the trash. When asked about the knife used to stab Mr. Farrohk-Shahab, Ms. Nazarian responded, "Have you found it yet?" Ms. Nazarian was reluctant to show Agent Lowrey where the

knife was located. Ms. Nazarian was advised that if she had knowledge of the knife's location and hid evidence, it could be a crime. Ms. Nazarian was wringing her hands, covering her face with her hands, crying and shaking her head. Ms. Nazarian later reluctantly walked to the kitchen and pointed to the drawer where the knife was found. The knife was wrapped in a tissue and napkin and stuffed in the back of the drawer. Ms. Nazarian said the knife was the one used to stab Mr. Farrohk-Shahab.

On November 16, 2005, a lawyer surrendered defendant at the Glendale Police Station to be formally booked and then post bail. As Agent Lowrey was booking defendant, he indicated that he wanted to tell her what occurred on November 5, 2005. Agent Lowrey explained that an interview would take place after the booking process was completed. Agent Lowrey further explained that any discussion regarding the crime would require an advisement of constitutional rights. Thereafter, Agent Lowrey advised defendant of his constitutional rights. Agent Lowrey took defendant to an interview room with a tape recorder and had Sergeant Lola Abrahamian present before discussing the crime with him. Agent Lowrey advised defendant of his constitutional rights a second time. An audio recording of the interview was played for the jurors at trial. During the interview, defendant admitted that he had been using the fruit knife inside the house and already had it in his hand when he ran out of the house. When asked when the smaller knife was used in the attack, defendant explained the stabbing as follows: "I didn't even . . . that one. I honestly wouldn't. It was in my hand. He – he runs towards me. And you have . . . pushing me, I . . . the knife in my hand. So by pushing me, I don't know how that – how did it happen." Defendant denied knowing the knife was in his hand. After further questioning, defendant admitted he had the knife during the fight. Defendant also admitted that he picked up a large knife when he went back into the house.

Ms. Nazarian came to Ms. Davoodian's home almost daily after the incident. Ms. Nazarian visited Ms. Davoodian after work. Defendant occasionally accompanied Ms. Nazarian on these visits. On more than one occasion, Ms. Nazarian asked Ms. Davoodian and Mr. Mansoori to speak to Mr. Farrohk-Shahab. Ms. Davoodian described Ms.

Nazarian's comments concerning speaking to Mr. Farrohk-Shahab as follows: "[S]he said go and talk to [Mr. Farrohk-Shahab] and tell him to finish up with this small problem or issue. And tell him that he has disrupted our lives with his behavior and actions." In November 2005, Mr. Wasem overheard a telephone conversation between Mr. Farrohk-Shahab and Ms. Nazarian. During that conversation, Mr. Farrohk-Shahab repeatedly said he was unwilling to take money to drop the case.

In June 2006, after the preliminary hearing in this case, Ms. Nazarian flew to Delaware to see Dr. Shahab and his wife, Sally Campbell. Ms. Nazarian's purpose in visiting them was to enlist their aid in talking to Mr. Farrohk-Shahab. Ms. Nazarian wanted Dr. Shahab and Ms. Campbell to suggest to Mr. Farrohk-Shahab that the stabbing was an accident. Ms. Nazarian told Ms. Campbell that if Mr. Farrohk-Shahab were to say that the stabbing was an accident, he would have money for everything he needed. Ms. Nazarian made it clear she and defendant would insure Mr. Farrohk-Shahab was provided for financially. Dr. Shahab agreed to speak to Mr. Farrohk-Shahab. Ms. Nazarian denied having said that Mr. Farrohk-Shahab would not get financial support if he failed to so testify.

Dr. Shahab and Ms. Campbell testified at trial that Ms. Nazarian visited them in Delaware in June 2006. Dr. Shahab and Ms. Campbell contradicted portions of Ms. Nazarian's recollection of their conversations in Delaware. Throughout her visit, Ms. Nazarian discussed the stabbing. Ms. Nazarian admitted that defendant had a fruit knife in his hand at the time of the stabbing. But Ms. Nazarian told Dr. Shahab and Ms. Campbell the stabbing of Mr. Farrohk-Shahab was an accident. Ms. Nazarian asked Dr. Shahab and Ms. Campbell to talk to Mr. Farrohk-Shahab. They were to ask Mr. Farrohk-Shahab to drop the charges, say it was an accident, or just refuse to testify. Ms. Nazarian said that she could not support Mr. Farrohk-Shahab if anything happened to defendant because she would have no money.

Dr. Shahab and Ms. Campbell telephoned Mr. Farrohk-Shahab after Ms. Nazarian returned home. Mr. Farrohk-Shahab told them what had occurred. Ms. Campbell told

Mr. Farrohk-Shahab that Ms. Nazarian had visited them. Mr. Farrohk-Shahab's version of the events differed significantly from that provided by Ms. Nazarian. Mr. Farrohk-Shahab said: "What did she want you to do? . . . Why would my own mother want - - get involved? She shouldn't be with this man, he stabbed me." Mr. Farrohk-Shahab told Ms. Campbell the family had proposed a financial settlement to make the case go away. Ms. Campbell told Mr. Farrohk-Shahab that Ms. Nazarian asked them to request he not testify and to say it was an accident. Mr. Farrohk-Shahab told Ms. Campbell that he would not take any money to make the case go away. Mr. Farrohk-Shahab said he was afraid.

Dr. Shahab met with Mr. Farrohk-Shahab in Las Vegas in August 2006. Dr. Shahab was in Las Vegas in connection with Mr. Farrohk-Shahab father's estate. Mr. Farrohk-Shahab negotiated a settlement regarding his inheritance. Ms. Nazarian was with Mr. Farrohk-Shahab in Las Vegas at that time. While in Dr. Shahab's presence, Ms. Nazarian discussed the payment of money with Mr. Farrohk-Shahab. Dr. Shahab described Ms. Nazarian's offer as follows, "Say we give you some money for your expenses, the money you owe for student loan and just to drop the charges." According to Dr. Shahab, Mr. Farrohk-Shahab refused the offer stating, "[N]o, I don't want to get any money."

Further, Ms. Nazarian asked Ms. Davoodian and Mr. Mansoori to speak to Mr. Farrohk-Shahab about dropping the charges. At some time in August 2006, Mr. Mansoori spoke with Mr. Farrohk-Shahab about the pending charges against defendant. Ms. Davoodian later told Ms. Nazarian that Mr. Farrohk-Shahab said he wanted \$500,000. Later in the conversation, Ms. Davoodian told Ms. Nazarian Mr. Farrohk-Shahab made the following demand, "And then later [Mr. Farrohk-Shahab] had said, no, I just want half of all [defendant's] assets." Mr. Mansoori related the conversation with Mr. Farrohk-Shahab to Ms. Davoodian. Ms. Davoodian then relayed the conversation between Mr. Farrohk-Shahab and Mr. Mansoori concerning the bribe to Ms. Nazarian. But, Ms. Davoodian did not recall telling Detective Matt Irvine: "No, No. I don't think

so” in response to the question: “Did [Mr. Mansoori] say that [Mr. Farrohk-Shahab] demanded money in exchange for his testimony and dropping the case?”

Sergeant Abrahamian was present during the interview between Detective Irvine and Ms. Davoodian. Ms. Abrahamian spoke English as well as the dialect spoken by Armenians from Armenia or Iran. Sergeant Abrahamian assisted with translation during the interview. The interview was recorded. Ms. Davoodian was able to communicate effectively with Sergeant Abrahamian. During the interview, Ms. Davoodian told Sergeant Abrahamian that Ms. Nazarian admitted that on November 5, 2005, defendant had run out of the house with a knife in his hand. Ms. Davoodian also described Ms. Nazarian’s efforts to have Mr. Farrohk-Shahab drop the case against defendant. Ms. Davoodian did not say that Mr. Farrohk-Shahab had demanded money or property. Ms. Davoodian did say that Mr. Mansoori had offered money to Mr. Farrohk-Shahab to make the case go away. Ms. Davoodian did not say Mr. Farrohk-Shahab had manipulated his wound in any way in her presence.

Detective Irvine also interviewed Mr. Mansoori in August 2006. Although Sergeant Abrahamian was present to assist with translation, 98 percent of the interview was conducted in English. Mr. Mansoori appeared to understand the questions asked. Mr. Mansoori denied seeing Mr. Farrohk-Shahab manipulate the knife wound. Mr. Mansoori said that Mr. Farrohk-Shahab did not attempt to extort money from defendant. Detective Irvine described Mr. Mansoori’s statement: “Mr. Mansoori said the [Mr. Farrohk-Shahab] was not lying to extort money from [defendant], nor . . . was he willing to change his testimony in exchange to get money from [defendant] or anybody else in the family.” Mr. Mansoori acknowledged speaking with Ms. Nazarian and defendant about the topic of offers of money to Mr. Farrohk-Shahab. Mr. Mansoori stated several times that Mr. Farrohk-Shahab said money was not the issue in this case.

Mr. Farrohk-Shahab learned that in June 2006, Ms. Nazarian had gone to visit Dr. Shahab and Ms. Campbell in Delaware. After the preliminary hearing in this case, Ms. Nazarian offered Mr. Farrohk-Shahab property in exchange for a change in his testimony.

Ms. Nazarian told Mr. Farrohk-Shahab “they” owned a business in Las Vegas that was in the name of defendant’s children. Ms. Nazarian told Mr. Farrohk-Shahab they would put his name on the business if he dropped the case. Mr. Farrohk-Shahab told Ms. Nazarian that he was uninterested. Later, Ms. Nazarian offered Mr. Farrohk-Shahab \$250,000 in exchange for dropping the charges against defendant. Ms. Nazarian also asked Mr. Farrohk-Shahab to characterize what occurred as an accident. Mr. Farrohk-Shahab rejected his mother’s offer.

On another occasion, Mr. Mansoori offered Mr. Farrohk-Shahab \$500,000 to “make this case go away.” Mr. Farrohk-Shahab rejected the offer. But Mr. Farrohk-Shahab made a \$2 million counteroffer. Mr. Farrohk-Shahab explained his counteroffer: “I would have never accepted any offer [defendant] gave me because I was scared he would give me the money. The next day I would be dead.” Mr. Farrohk-Shahab testified the only way he would accept money would be to have enough that he could disappear to another country where no one could find him. Mr. Farrohk-Shahab knew that there was no possibility his \$2 million demand could be met. Mr. Farrohk-Shahab was unwilling to change his testimony for money.

III. DISCUSSION

A. Evidence of Willful, Deliberate and Premeditated Attempted Murder

Defendant argues that there was insufficient evidence to support the finding that he committed willful, deliberate and premeditated attempted murder. Defendant argues: “It is not reasonable to infer that [he] intended to kill [Mr. Farrohk-Shahab] even if one accepts the [prosecution’s] theory that [he] intentionally grabbed the knife. . . . [¶] It is not reasonable for a man of [defendant’s] age and size to assume the he would cause the death of a young healthy man with a stab from a paring knife.” Defendant further argues that he reacted rashly without thought.

In reviewing a challenge of the sufficiency of the evidence, we apply the following standard of review: “[We] consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted; *People v. Hayes* (1990) 52 Cal.3d 577, 631; *People v. Johnson* (1980) 26 Cal.3d 557, 576.) Our sole function is to determine if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia, supra*, 443 U.S. at p. 319; *People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *Taylor v. Stainer, supra*, 31 F.3d at pp. 908-909.) The standard of review is the same in cases where the prosecution relies primarily on circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Stanley* (1995) 10 Cal.4th 764, 792; *People v. Bloom* (1989) 48 Cal.3d 1194, 1208; *People v. Bean* (1988) 46 Cal.3d 919, 932.) The California Supreme Court has held, “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*People v. Bolin, supra*, 18 Cal.4th at p. 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.)

The California Courts of Appeal have held: “‘Like first degree murder, attempted first degree murder requires a finding of premeditation and deliberation. “[T]he test on appeal is whether a rational trier of fact could have found premeditation and deliberation beyond a reasonable doubt based upon the evidence presented.” The three categories of evidence for a reviewing court to consider with respect to premeditation and deliberation are: (1) prior planning activity; (2) motive; and (3) the manner of killing. “The process of premeditation and deliberation does not require any extended period of time. ‘The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at

quickly’ [Citations.]””” (*People v. Ibarra* (2007) 151 Cal.App.4th 1145, 1152, quoting *People v. Villegas* (2001) 92 Cal.App.4th 1217, fns. omitted; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1462, fn. 8.)

In *People v. Koontz* (2002) 27 Cal.4th 1041, 1080, quoting *People v. Mayfield* (1997) 14 Cal.4th 668, 767, our Supreme Court held: “A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. (§ 189 [‘willful, deliberate and premeditated killing’ as first degree murder].) ‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance. [Citations.] ‘The process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity, and cold, calculated judgment may be arrived at quickly. . . .” [Citations.]’ [Citation.]”

In *People v. Anderson* (1968) 70 Cal.2d 15, 26, our Supreme Court identified three categories of evidence available to sustain a finding of premeditated murder—planning, motive, and intent. The Supreme Court later clarified, “The *Anderson* analysis was intended only as a framework to aid in appellate review, it did not propose to define the elements of first degree murder or alter the substantive law of murder in any way.” (*People v. Perez* (1992) 2 Cal.4th 1117, 1125; see also *People v. San Nicolas* (2004) 34 Cal.4th 614, 658; *People v. Mayfield*, *supra*, 14 Cal.4th at p. 768; *People v. Sanchez* (1995) 12 Cal.4th 1, 32, overruled on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn.22.) In *People v. Manriquez* (2005) 37 Cal.4th 547, 577, the Supreme Court reiterated: “[W]e continue to apply the principle that ‘[t]he process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. . . .” [Citations.]’ [Citations.]” (*Ibid.*, quoting *People v. Hughes* (2002) 27 Cal.4th 287, 370-371.) In *People v. Smith* (2005) 37 Cal.4th 733, 741-742, quoting *People v. Arias* (1996) 13 Cal.4th 92, 162, our Supreme Court held: “[I]f the jury found defendant’s use of a lethal

weapon with lethal force was purposeful, an intent to kill could be inferred, *even if the act was done without advance consideration and only to eliminate a momentary obstacle or annoyance.*’ [Citation.] . . . [M]otive is generally not an element of a crime in the first instance, including the crimes of murder and attempted murder. One may kill with or without a motive and still be found to have acted with express malice.” (Original italics.)

Here, there was substantial circumstantial evidence to support the jurors’ willfulness, deliberation, and premeditation finding. Defendant and Mr. Farrohk-Shahab had a difficult relationship for years. In fact, Mr. Farrohk-Shahab lived with various relatives as a child and teenager because of defendant’s attitudes. As a young adult, Mr. Farrohk-Shahab also lived away from home, despite his close relationship with his mother. Eventually, Mr. Farrohk-Shahab moved to his mother’s residence. But Mr. Farrohk-Shahab minimized any contact with defendant. Mr. Farrohk-Shahab either remained in his room or came home after defendant left for another residence each evening.

In March 2005, defendant became furious because Mr. Farrohk-Shahab had used Ms. Nazarian’s car to drive her to the hospital for treatment of an illness. Mr. Farrohk-Shahab advised defendant telephonically concerning Ms. Nazarian’s hospitalization. Defendant screamed over the phone, “Where’s my wife you little fucker?” Mr. Farrohk-Shahab hung up the phone. Defendant called Mr. Farrohk-Shahab back. Defendant ordered Mr. Farrohk-Shahab to get to the Nazarian residence immediately. In the conversation, defendant used profanity and threatened Mr. Farrohk-Shahab. Mr. Farrohk-Shahab returned to the Nazarian residence and was immediately assaulted by defendant. Mr. Farrohk-Shahab was punched at least eight times in the head with a closed fist. This occurred while Mr. Farrohk-Shahab sat still restrained by his seatbelt. Eventually, defendant was distracted by Mr. Farrohk-Shahab’s friend, Mr. Mandujano. Only then was Mr. Farrohk-Shahab able to get out of the car. Defendant again hit Mr. Farrohk-Shahab as they stood in the middle of the street. Mr. Farrohk-Shahab then pushed defendant away. Eventually, Mr. Farrohk-Shahab struck defendant in self defense.

Although the police were summoned, Mr. Farrohk-Shahab declined to press charges against defendant. Officer Salmeron interviewed Ms. Nazarian at the scene. Ms. Nazarian was afraid defendant would kill Mr. Farrohk-Shahab. A few days later, Ms. Nazarian told Mr. Farrohk-Shahab he must move out of her home. The move was necessitated because defendant did not want Mr. Farrohk-Shahab in the residence.

Mr. Farrohk-Shahab did not see defendant again until November 5, 2005. Mr. Farrohk-Shahab came to the house to walk with his mother. Mr. Farrohk-Shahab did not go inside the Nazarian residence. Rather, Mr. Farrohk-Shahab waited on the porch while Ms. Nazarian went for sweater. Mr. Farrohk-Shahab walked to the porch. Mr. Farrohk-Shahab saw defendant was watching television and eating fruit. Some words were exchanged between them. When Ms. Nazarian left to walk with Mr. Farrohk-Shahab, defendant suddenly opened the front door. Defendant threatened to kill Mr. Farrohk-Shahab. Mr. Farrohk-Shahab responded: "I have nothing to prove. And this is ridiculous." Defendant went back inside. As Mr. Farrohk-Shahab and Ms. Nazarian began walking down the sidewalk, defendant ran out of the house armed with the paring knife. Defendant then stabbed Mr. Farrohk-Shahab with the knife. After the stabbing, defendant went back inside and picked up a large kitchen knife. It was only because Ms. Nazarian said defendant would have to kill her before anything further happened that he put the knife down. After the incident, Ms. Nazarian also told Officer McDonald defendant had previously threatened to kill Mr. Farrohk-Shahab.

The jury could reasonably infer that defendant had sufficient time to premeditate and deliberate before he intentionally picked up the fruit knife and left the residence. Defendant then charged Mr. Farrohk-Shahab. Defendant had threatened to kill Mr. Farrohk-Shahab previously and on the night of November 5, 2005. Defendant's further act of getting a larger knife when his first attempt was unsuccessful supports the inference he possessed the requisite mental culpability. (*People v. San Nicolas, supra*, 34 Cal.4th at p. 658 [the brief period during which defendant saw the victim's reflection in a mirror and turned around to stab her was adequate to have reached the deliberate and

premeditated decision to kill]; *People v. Mayfield*, *supra*, 14 Cal.4th at p. 769; *People v. Sanchez*, *supra*, 12 Cal.4th at pp. 32-33; *People v. Pride* (1992) 3 Cal.4th 195, 247; *People v. Perez*, *supra*, 2 Cal.4th at pp. 1125-1126; *People v. Thomas* (1992) 2 Cal.4th 489, 516-517.)

B. Alleged Prosecutorial Misconduct

1. Overview

Defendant argues that the prosecutor, Debra Archuleta, committed misconduct by: arbitrarily using immunity power; denying his constitutional right to compel the attendance of a witness and present a defense; and making inappropriate comments during closing argument. In reviewing the principles governing findings of prosecutorial misconduct the California Supreme Court has consistently noted: “““The applicable federal and state standards regarding prosecutorial misconduct are well established. ““A prosecutor’s . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct ‘so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.’”” [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves “““the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.’”” [Citation.]” (*People v. Carter* (2005) 36 Cal.4th 1215, 1263, quoting *People v. Ochoa* (1998) 19 Cal.4th 353, 427; *People v. Hill* (1998) 17 Cal.4th 800, 819; *People v. Samayoa* (1997) 15 Cal.4th 795, 841; see also *Donnelly v. DeChristoforo* (1974) 416 U.S. 637, 642-643; *People v. Harris* (1989) 47 Cal.3d 1047, 1084, criticized on other grounds in *People v. Wheeler* (1992) 4 Cal.4th 284, 299, fn. 10.)

2. Forfeiture

Defendant neither objected to the alleged instances of prosecutorial misconduct at trial nor requested a grant of immunity for Mr. Mansoori. The failure to timely object forfeits these issues on appeal. A reviewing court will generally not review a claim of prosecutorial misconduct unless an objection and request for admonishment was raised at trial, or unless an admonishment would not have cured the harm. (*People v. Benavides* (2005) 35 Cal.4th 69, 108 [defendant’s failure to object to prosecutor’s alleged plea to the passions and prejudices of the jury and failure to request an admonition resulted in forfeiture of the issue on appeal]; *People v. Sapp* (2003) 31 Cal.4th 240, 279; *People v. Navarette* (2003) 30 Cal.4th 458, 507; *People v. Kipp* (2001) 26 Cal.4th 1100, 1130; *People v. Ochoa, supra*, 19 Cal 4th at p. 427.) Our Supreme Court has held, ““The reason for this rule, of course, is that “the trial court should be given an opportunity to correct the abuse and thus, if possible, prevent by suitable instruction the harmful effect upon the minds of the jury.” [Citation.]’ [Citation.]” (*People v. Cox* (1991) 53 Cal.3d 618, 682, quoting *People v. Green* (1980) 27 Cal.3d 1, 27, disapproved on another point in *People v. Doolin, supra*, 45 Cal.4th at p. 421, fn. 22 and *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3.)

3. Immunity

a. factual and procedural background

Defendant argues that the prosecutor committed misconduct by arbitrarily granting immunity to Ms. Nazarian but not to Mr. Mansoori. During her opening statement, the prosecutor stated: “[Ms. Nazarian] told [Ms. Campbell] and [Dr. Shahab] that if [Mr. Farrohk-Shahab] would say that this was an accident, that he would be taken care of financially. [Ms. Nazarian] also told them that if [Mr. Farrohk-Shahab] spoke against his

stepfather, the defendant, that they would not support him financially any longer.” The prosecutor further argued: “[Mr. Mansoori] will tell you that he also attempted to dissuade [Mr. Farrohk-Shahab] from testifying against the defendant. And, in fact, was present when there was [sic] discussions between [Ms. Nazarian] and [Mr. Farrohk-Shahab] about paying him off to make this case go away.” On the other hand, defense counsel’s opening argument included the following: “[Mr. Farrohk-Shahab] said to other people, to his mother, to [Mr. Mansoori], [Dr. Shahab], you get me \$2 million and you’ll never see me again. Put half of everything that [defendant] owns in my name.” Defense counsel further argued that the jurors would hear testimony that Mr. Farrohk-Shahab was disrespectful to defendant. Moreover, according to defense counsel, Mr. Farrohk-Shahab was ungrateful for the benefits defendant had provided over the years.

Ms. Nazarian testified at length regarding the November 5, 2005 incident. Ms. Nazarian testified that a large kitchen knife was on the kitchen counter after defendant’s initial altercation with Mr. Farrohk-Shahab. But she denied seeing defendant grab the large kitchen knife. Ms. Nazarian also denied she told the police that defendant held the large knife. Ms. Nazarian also denied participating in any conversation with defendant, Ms. Davoodian, and Mr. Mansoori about a bribe which could lead to the dismissal of the charges. Ms. Nazarian admitted asking Ms. Davoodian and Mr. Mansoori to speak to Mr. Farrohk-Shahab about dropping the case but not for money. Ms. Nazarian acknowledged that she spoke almost daily with Detective Irvine for some time. Ms. Nazarian did not remember telling Detective Irvine that defendant was present in Ms. Davoodian’s back yard when Mr. Mansoori discussed a “half-million-dollar” bribe. Ms. Nazarian said she told Mr. Farrohk-Shahab repeatedly the stabbing was just an accident but never offered him money or things of value to testify differently.

The prosecutor attempted to question Ms. Nazarian regarding the Delaware trip where a bribe was discussed with Dr. Shahab and Ms. Campbell. Defense counsel

objected on Evidence Code section 940 grounds.³ A sidebar conference followed. One of defendant's attorneys, Allen Rose, argued Ms. Nazarian was being questioned about a criminal act for which she could be prosecuted. The trial court noted: "Well, I've got to say, so far she has not admitted to anything that would lead to potential criminal liability. But certainly the potential is there. Particularly in light of the People's earlier offer of proof that there were admissions made by the witness to the detective. [¶] I think, out of abundance of caution, if she's not represented by counsel, spoken to her about this issue - I don't know if this conversation that you're going into in Delaware now is going to be more incriminating than what she's previously testified to. So far she's denied that she ever offered anyone money, specifically in exchange for false testimony. So there's no criminal exposure or liability with her testimony thus far. [¶] But I agree with [defense counsel], that given this issue and given the People's offer of proof, if the People are not going to immunize her for her alleged conduct in connection with this, then she needs to consult with an attorney to decide what her options are." The prosecutor, Ms. Archuletta, expressed uncertainty as to what Ms. Nazarian's testimony would be regarding the Delaware trip. Ms. Archuletta had not interviewed Ms. Nazarian. Ms. Archuletta explained: "Every time we talk to her it's a different version. I am only going off the information contained in the reports." In addition, Ms. Archuletta indicated that a request for immunity must be approved by the "chain[] of command" within her office. The trial court believed there was a need to appoint an attorney to advise Ms. Nazarian even absent a grant of immunity by the prosecutor's office.

The following day, Steven Larkin was appointed to represent Ms. Nazarian. Mr. Larkin stated Ms. Nazarian would invoke her Fifth Amendment privilege. The trial court indicated that although the prosecutor decided not to question Ms. Nazarian about the

³ Evidence Code section 940 states, "To the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to

Delaware trip, Mr. Larkin was still appointed: “Because I think the potential for self-incrimination is there with regard to conversations generally about whether she ever offered the victim in this matter money in exchange for testifying falsely in court. And there was some discussion of that on direct yesterday, particularly as it relates to the conversation in the uncle’s backyard. [¶] And so I think that the potential covers not only the Delaware conversations, but also based on the People’s offer of proof yesterday, potentially the backyard conversation as well. But, as I indicated to counsel before we went on the record, as it stands right now, there’s a complete denial of this witness yesterday that there was ever any criminal conduct on her part.” One of defendant’s attorneys, Mr. Rose, argued that he necessarily had to cross-examine Ms. Nazarian about the attempts to bribe Mr. Farrohk-Shahab. Immunity was granted to Ms. Nazarian. The immunity grant was to be applied retrospectively to cover any conduct arising out of this case involving the crimes of perjury and attempts to bribe or dissuade a witness.

When trial resumed, Ms. Nazarian acknowledged that she had been granted immunity from prosecution in connection with perjury and efforts to bribe a witness. Ms. Nazarian admitted telling Ms. Campbell that if Mr. Farrohk-Shahab were to say the stabbing was an accident, he would have money for everything he needed. However, Ms. Nazarian denied saying that if Mr. Farrohk-Shahab did not change his testimony she would not be able to support him financially.

The trial court also inquired regarding the necessity of appointing counsel to represent Ms. Davoodian and Mr. Mansoori prior to their testimony. Toney Govea was appointed to advise Ms. Davoodian. Mr. Govea reported Ms. Davoodian was not a percipient witness to any conversations between Mr. Farrohk-Shahab and Mr. Mansoori related to money or dropping the case. Ms. Davoodian indicated that after discussing the issue with Mr. Govea, she would voluntarily testify. Mr. Mansoori, however, indicated that he would invoke his Fifth Amendment privilege absent a grant of immunity.

refuse to disclose any matter that may tend to incriminate him.”

However, the prosecutor did not call Mr. Mansoori as a witness and declined to grant him immunity. Mr. Mansoori was called as a defense witness only regarding his observations of what took place when he and Ms. Davoodian arrived at the Nazarian home after the November 5, 2005 stabbing. Defense counsel did not request that Mr. Mansoori be granted non-statutory immunity.

b. The failure to grant immunity to Mr. Mansoori

The California Supreme Court has held: “The grant of immunity is an executive function, and prosecutors are not under a general obligation to provide immunity to witnesses in order to assist a defendant. [Citations.]” (*People v. Williams* (2008) 43 Cal.4th 584, 622; *People v. Samuels* (2005) 36 Cal.4th 96, 127; *People v. Stewart* (2004) 33 Cal.4th 425, 468; *In re Williams* (1994) 7 Cal.4th 572, 609; *People v. Cudjo* (1993) 6 Cal.4th 585, 619; *In re Weber* (1974) 11 Cal.3d 703, 720.) Our Supreme Court has also held: “[A]lthough the prosecution has a statutory right, incident to its charging authority, to grant immunity and thereby compel testimony [citation], California cases have uniformly rejected claims that a criminal defendant has the same power to compel testimony by forcing the prosecution to grant immunity.” [Citation.]” (*People v. Samuels, supra*, 36 Cal.4th at p. 127, quoting *In re Williams, supra*, 7 Cal.4th at p. 609; see also *People v. Cudjo, supra*, 6 Cal.4th at p. 619; *In re Weber, supra*, 11 Cal. 3d at p. 720.) Defendant argues that the prosecutor “manipulated the presentation of evidence” in such a manner as to deceptively persuade the jurors he was guilty. More specifically, defendant argues: “The prosecutor knew before she called [Ms.] Nazarian that the prosecutor would accuse [Ms.] Nazarian of a crime. The prosecutor remained silent regarding the need for counsel to advise the witness.” Defendant notes that after Ms. Nazarian was assigned counsel and invoked her Fifth Amendment privilege not to testify, only then was she granted immunity. Defendant’s ultimate complaint is that thereafter immunity was not granted to Mr. Mansoori, “Because there does not appear to be an

objective reason to treat the two witnesses differently, it must be assumed that the decision to grant [Ms. Nazarian] immunity and not [Mr. Mansoori] was a personally motivated decision.” Defendant concludes that the prosecutor’s “unjustified” refusal to grant Mr. Mansoori immunity denied the defense access to exculpatory evidence.

Defendant’s reliance on federal circuit court decisions in *United States v. Westerdahl* (9th Cir. 1991) 945 F.2d 1083, 1086, *Government of Virgin Islands v. Smith* (3rd Cir. 1980) 615 F.2d 964, 972, and *People v. Hunter* (1989) 49 Cal.3d 957, 974-976 to support his contentions is misplaced. Preliminarily, decisions of lower federal courts, while persuasive, are not binding on us. (*People v. Seaton* (2001) 26 Cal.4th 598, 653; *People v. Williams* (1997) 16 Cal.4th 153, 190; *Wagner v. Apex Marine Ship Management Corp.* (2000) 83 Cal.App.4th 1444, 1451.) These cases relate to a defendant’s request that the trial court grant the witness use immunity, which did not occur in this case. Moreover, the holdings of *Westerdahl* and *Smith* are premised upon the finding that the testimony was both exculpatory and essential. (*United States v. Westerdahl, supra*, 945 F.2d at pp. 1086-1087; *Government of Virgin Islands v. Smith, supra*, 615 F.2d at p. 972.)

Our Supreme Court recently reiterated: “[W]e have expressed reservations concerning claims that trial courts possess inherent authority to grant immunity [citation], and even assuming the court possesses such authority, it has been recognized only when the defense has made a showing that a *defense* witness should be afforded immunity in order to provide clearly exculpatory testimony. [Citation.]” (*People v. Williams, supra*, 43 Cal.4th at pp. 622-623, original italics; *People v. Samuels, supra*, 36 Cal.4th at p. 127; see *People v. Stewart, supra*, 33 Cal.4th at pp. 469-470; *People v. Hunter, supra*, 49 Cal.3d at p. 975.) The Ninth Circuit Court of Appeals recently came to a similar conclusion: “We now hold that for a defendant to compel use immunity the defendant must show that: (1) the defense witness’s testimony was relevant; and (2) either (a) the prosecution intentionally caused the defense witness to invoke the Fifth Amendment right against self-incrimination with the purpose of distorting the fact-finding process; or (b)

the prosecution granted immunity to a government witness in order to obtain that witness's testimony, but denied immunity to a defense witness whose testimony would have directly contradicted that of the government witness, with the effect of so distorting the fact-finding process that the defendant was denied his due process right to a fundamentally fair trial." (*United States v. Straub* (9th Cir. 2008) 538 F.3d 1147,1162.)

Neither situation was present here. Mr. Mansoori was an anticipated prosecution witness. The prosecutor decided not to call Mr. Mansoori. Defense counsel decided to call Mr. Mansoori to testify regarding topics other than the attempted bribery of Mr. Farrohk-Shahab. Mr. Mansoori effectively testified regarding the events that he observed prior to and on November 5, 2005. Among the events testified to by Mr. Mansoori were: Mr. Farrohk-Shahab's long-standing animosity toward defendant; Mr. Farrohk-Shahab's prior statements about a plan to provoke a fight with defendant and then file a civil suit; Mr. Farrohk-Shahab's alleged delight in finding the knife used by defendant; Mr. Farrohk-Shahab's manipulation of his wound; and Mr. Farrohk-Shahab's statements concerning instigating an incident and taking revenge against defendant. Neither the trial court nor the prosecutor here had an obligation to provide immunity to Mr. Mansoori in order to assist defendant. (*People v. Williams, supra*, 43 Cal.4th at p. 622; *People v. Samuels, supra*, 36 Cal.4th at p. 127; *People v. Cudjo, supra*, 6 Cal.4th at p. 619.)

In any event, any error is harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *Neder v. United States* (1999) 527 U.S. 1, 18; *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 681; see also *People v. Geier* (2007) 41 Cal.4th 555, 608.) Defendant had previously attacked Mr. Farrohk-Shahab. Moreover, defendant had repeatedly threatened to kill Mr. Farrohk-Shahab. On November 5, 2005, defendant: was the aggressor; shouted profanities at Mr. Farrohk-Shahab; and after stabbing Mr. Farrohk-Shahab, returned to the house in order to get a bigger knife. Defendant was unsuccessful in further injuring Mr. Farrohk-Shahab only because Ms. Nazarian intervened. Any error was harmless.

4. Other incidents of alleged prosecutorial misconduct

(a) comments regarding Mr. Mansoori's exercise of his right to counsel

Defendant argues that the prosecutor's reference during argument that Mr. Mansoori's failure to testify concerning the bribery offer constituted misconduct. Evidence Code section 913, subdivision (a)⁴, prohibits the court or an attorney referring to a witness's assertion of a privilege not to testify. (*People v. Mincey, supra*, 2 Cal.4th at p. 441; see also *People v. Williams, supra*, 43 Cal.4th at p. 630.) As set forth above, a defendant's failure to object to a prosecutor's argument at trial constitutes a waiver of the issue on appeal. (See *People v. Carter, supra*, 36 Cal.4th at p. 1267; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 74 [defendant's failure to object at trial to the prosecutor's comments regarding his failure to testify or ask that the court admonish the jury forfeited any appellate challenge].)

During argument, the prosecutor argued that the jury must evaluate Ms. Nazarian's credibility. In making that evaluation, the prosecutor discussed on Ms. Nazarian's testimony. The prosecutor argued Ms. Nazarian was more interested in protecting defendant than Mr. Farrohk-Shahab. Further, according to the deputy district attorney, Ms. Nazarian enlisted help for Mr. Farrohk-Shahab not out of any concern for his mental well being. The prosecutor explained Ms. Davoodian was asked to speak to Mr. Farrohk-Shahab about the charges against defendant. In that conversation, Ms. Nazarian stated Mr. Farrohk-Shahab had disrupted her life with his behavior and actions. The prosecutor then stated: "Family like that, who needs enemies. Then you heard from [Mr. Mansoori]

⁴ Evidence Code section 913, subdivision (a) states in part, "If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon. . . ."

this morning . . . [Mr. Mansoori] also testified with a lawyer at his side. Is he believable, ladies and gentlemen? It was amazing that he and [Ms. Davoodian] both testified that [Mr. Farrohk-Shahab] was happy to be stabbed. I have never heard of anybody being happy to be stabbed.”

During his closing argument, defense counsel questioned the prosecutor’s representation of Ms. Nazarian as liar. Defense counsel argued that the prosecution called Ms. Nazarian as a witness. Defense counsel argued: “[A]fter two days of testimony the People gave her immunity for perjury, including perjury committed before you. And that would imply you can’t trust a word she said. [¶] And when we ask [Ms.] Nazarian what’s going on here, she says she didn’t ask for that immunity. She says she didn’t lie. And just to make it clear that she maintains she did not lie, the defense was left with no choice but to spend the morning re-asking her to affirm her answers to about 100 questions that she had been asked over the preceding two days.” Defense counsel continued that the prosecution called Ms. Davoodian, who did not give the testimony they wanted: “And then they decide not to call [Mr. Mansoori], leaving the obvious question of if [Mr. Mansoori] was at the same conversation as [Ms. Davoodian], does [Mr. Mansoori] describe it the same way? Well, lo and behold, when the defense called [Mr. Mansoori], he did. And he testified without the benefit of any immunity at all.” Defense counsel then reviewed Mr. Mansoori’s testimony. But defense counsel did not comment on the offer of a bribe because Mr. Mansoori did not testify regarding that topic.

In her rebuttal argument, the prosecutor reviewed defense counsel’s references to the possibility that Mr. Farrohk-Shahab could have been injured by a sprinkler or brick or the wound was self inflicted. The prosecutor noted that Ms. Nazarian kept the knife. This was because Ms. Nazarian was conflicted between her love for defendant and Mr. Farrohk-Shahab. The prosecutor continued: “You were told that, you know, the People bring in [Ms. Nazarian] and parade her in front of you and then offer her immunity. I didn’t stand there, ladies and gentlemen, and read a transcript for you for two and a half hours. She told you that in her mind she was telling the truth. [¶] Now you were told

about [Mr. Mansoori]. Well, [Mr. Mansoori] didn't testify all that much about this bribe attempt because he did not have a grant of immunity, but he sat there and testified for the defense with his lawyer sitting right by his side."

Our Supreme Court has held: "“[A] prosecutor is given wide latitude during argument. The argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom. [Citations.] . . .’ . . . [He] . . . “ . . . is not limited to ‘Chesterfieldian politeness’” [citation], and he may “use appropriate epithets”” (*People v. Wharton* [(1991)] 53 Cal.3d [522] 567-568 [.]’ [Citation.]” (*People v. Hill, supra*, 17 Cal.4th at p. 819, quoting *People v. Williams, supra*, 16 Cal.4th at p. 221; *People v. Brown* (2003) 31 Cal.4th 518, 554.) The Supreme Court recently held: “[W]hen the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.” (*People v. Morales* (2001) 25 Cal.4th 34, 44; *People v. Ayala* (2000) 23 Cal.4th 225, 283-284.) Furthermore, our Supreme Court has held that a prosecutor’s comments in closing argument “must be viewed in context” with the remainder of the summation. (*People v. Stansbury* (1993) 4 Cal.4th 1017, 1057, reversed on other grounds in *Stansbury v. California* (1994) 511 U.S. 318, 326; see also *People v. Medina* (1995) 11 Cal.4th 694, 759-760; *People v. Pensinger* (1991) 52 Cal.3d 1210, 1250.) Here, the contested prosecutor’s comments were brief and isolated and served to refute defense counsel’s argument. Even if the issue had been properly preserved and the comments were improper, in view of the strength of the evidence against defendant, any error was harmless. (*United States v. Hasting* (1983) 461 U.S. 499, 511; *People v. Carter, supra*, 36 Cal.4th at p. 1267.) No prejudicial error occurred.

(b) comments suggesting an alleged cover-up

Defendant argues that during her argument the prosecutor “insinuate[d] [defendant] engaged in coverup conduct” by “mischaracterizing” the evidence. Defendant argues that an attempt of third parties to suppress testimony is inadmissible where that effort did not occur in his presence. (*People v. Weiss* (1958) 50 Cal.2d 535, 554; see 1 Witkin, Cal. Evidence 4th ed. (2000) Hearsay, § 113, pp. 817-818.) However, defendant cites only part of the record in support of this allegation. The prosecutor argued: “[Mr. Farrohk-Shahab] does discover that [Ms. Nazarian] was in Delaware and he discusses his - - the bribe attempt in his lingering affairs with [Ms. Campbell]. She testified for you yesterday. Thereafter, we have [Ms. Nazarian] and [Mr. Mansoori] and [Ms. Davoodian] and [defendant] urging [Mr. Farrohk-Shahab] to say this was an accident. The defendant says [Mr. Farrohk-Shahab] won’t get a penny. And then [Mr. Farrohk-Shahab] also discusses the bribe attempts and his fears with his uncle Mohammed in August of 2006.” Once again, defendant did not object or request an admonition regarding this argument. In any event, the prosecutor argued defendant said Mr. Farrohk-Shahab would not receive any money. Moreover, defendant’s desire that Mr. Farrohk-Shahab testify that the incident was an accident is consistent with the defense presented at trial. The argument accurately set forth the testimony at trial. No prosecutorial misconduct occurred.

(c) credibility vouching

Defendant argues that the prosecutor attacked the credibility of everyone except Mr. Farrohk-Shahab. Defendant argues the prosecutor closed with impermissible vouching for Mr. Farrohk-Shahab’s credibility. The California Supreme Court has held: “A prosecutor is prohibited from vouching for the credibility of witnesses or otherwise bolstering the veracity of their testimony by referring to evidence outside the record.

[Citations.] Nor is a prosecutor permitted to place the prestige of her office behind a witness by offering the impression that she has taken steps to assure a witness's truthfulness at trial. [Citation.] However, so long as a prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses are based on the 'facts of [the] record and the inferences reasonably drawn therefrom, rather than any purported personal knowledge or belief,' her comments cannot be characterized as improper vouching. [Citations.]" (*People v. Frye* (1998) 18 Cal.4th 894, 971, overruled on another point in *People v. Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22, quoting *People v. Medina*, *supra*, 11 Cal.4th at p. 757.) In addition, our Supreme Court has held: "It is not . . . misconduct to ask the jury to believe the prosecution's version of events as drawn from the evidence." (*People v. Huggins* (2006) 38 Cal.4th 175, 207; see also *People v. Navarette*, *supra*, 30 Cal.4th at p. 510; see also *People v. Stitely* (2005) 35 Cal.4th 514, 560; *People v. Sapp*, *supra*, 31 Cal.4th at p. 279.)

Here, defense counsel argued: "How come we don't have a doctor testifying that based on the condition of the stab wound, it was caused by a single knife blade? . . . [¶] . . . How about have a doctor testify that it's a clean single stab, not something that could have been the result of cutting your skin on bricks or on the debris in the yard or the lawn sprinkler." In response to defense counsel's argument that the prosecution did not call a physician to testify regarding Mr. Farrohk-Shahab's stab wound, the prosecutor argued: "Do you really need an expert to tell you that this young man was stabbed? The pictures speak a million words. Do you need an expert to come in - - you saw the knife. Do you need an expert to say, well, the knife was inserted into the body and it met resistance and when it was pulled out, it was curved, and here's the wound? . . . [¶] . . . Do you really need a doctor to tell you that [Mr. Farrohk-Shahab] was stabbed that night? Do you really need a knife expert to tell you that, oh, this is a stab wound? The People believe [Mr. Farrohk-Shahab]. They believe the evidence that we have presented, that we believe in his credibility as a witness. I don't need experts to come in here and reinforce what

you've already heard from the witness stand." These were clear comments on the evidence which refuted defense counsel's argument. No misconduct occurred.

(d) misstating or mischaracterizing the evidence

(i) overview

Defendant argues the prosecutor "argued without factual support and exaggerated" the testimony. As set forth above, a prosecutor has wide latitude during argument. The argument may be vigorous as long as it amounts to fair comment on the evidence, which may include reasonable inferences, or deductions to be drawn therefrom. (*People v. Brown, supra*, 31 Cal.4th at p. 554; *People v. Hill, supra*, 17 Cal.4th at p. 819.)

(ii) defendant's possession of the knife

Defendant argues that the prosecutor misrepresented the evidence concerning when he secured the paring knife. Defendant argues: "[T]he prosecutor repeatedly argued that appellant went out of the house to first argue with [Mr. Farrohk-Shahab], and then he went back inside the house to retrieve the paring knife, and then went outside to stab [Mr. Farrohk-Shahab]." Defendant argues that there was no evidence that he went back inside for the knife rather than already having it in his hand because he had been cutting the fruit. In fact, the prosecutor's argument was a reasonable interpretation of and fair comment on the evidence presented. (*People v. Hinton* (2006) 37 Cal.4th 839, 909; *People v. Jones* (1997) 15 Cal.4th 119, 188-189, overruled on another point in *People v. Hill, supra*, 17 Cal.4th at p. 823, fn. 1.) As noted, Mr. Farrohk-Shahab saw defendant through the window while waiting for Ms. Nazarian to return with a sweater to wear on their anticipated walk. Defendant was watching television and cutting fruit with the small knife. Defendant and Mr. Farrohk-Shahab exchanged words. When Ms.

Nazarian returned, she and Mr. Farrohk-Shahab began walking toward the sidewalk. Defendant opened the door and threatened to assault and kill Mr. Farrohk-Shahab. Defendant stepped back inside the house and closed the front door. Shortly thereafter, when the door opened again, defendant ran out of the house toward Mr. Farrohk-Shahab. Mr. Farrohk-Shahab approached defendant. Defendant then stabbed Mr. Farrohk-Shahab. As noted, Mr. Farrohk-Shahab was stabbed on the left side of his torso. The prosecutor's statement that defendant returned to grab a knife was a reasonable inference that might be drawn from this testimony. No misconduct occurred.

(iii) serious nature of Mr. Farrohk-Shahab's wound

Defendant argues that the prosecutor exaggerated the nature of Mr. Farrohk-Shahab's injury when she argued: "We know, ladies and gentlemen, that the defendant threatens [Mr. Farrohk-Shahab] and runs out of the house with what we've been calling the fruit knife in his hand and attempts to kill [Mr. Farrohk-Shahab] by stabbing him once in the stomach, *nearly causing him to perish*. [Mr. Farrohk-Shahab], you know, has surgery. And [Ms. Nazarian] tells Officer McDonald . . . about the numerous threats her husband has made to kill her son." (Italics added.) Defendant relies on language in *People v. Hill, supra*, 17 Cal.4th at pages 824-827 which involves the mischaracterization of a folding knife as a buck knife. Defendant argues, in a similar vein, that arguing a minor stab wound constitutes an attempt to kill is an improper mischaracterization of the testimony. Here, Mr. Farrohk-Shahab suffered a wound to his abdomen that bled while he was still at the Nazarian residence, causing his T-shirt to be soaked in blood. Mr. Farrohk-Shahab then drove to Mr. Wasem's Lawndale residence. As he was driving, Mr. Farrohk-Shahab began to weaken. Mr. Farrohk-Shahab felt his abdomen and discovered he was again soaked in blood. Once at the hospital, Mr. Farrohk-Shahab underwent surgery. Thereafter, Mr. Farrohk-Shahab was required to visit the hospital daily for three weeks as the wound did not heal properly. This evidence could be reasonably understood

to suggest that Mr. Farrohk-Shahab could have died from the stab wound inflicted by defendant. As a result, no prosecutorial misconduct occurred.

(iv) defendant's intent to kill

Defendant further argues that the prosecutor committed misconduct by arguing, “[Defendant] demonstrated over and over and over again that one way or another . . . he was going to get rid of this kid.” But prior to this statement, the prosecutor reviewed evidence of defendant’s stated intent to kill Mr. Farrohk-Shahab: “[L]et’s talk about [March 17, 2005]. Once again revisiting the issue of when the defendant is driving his wife home from the hospital and because he’s so angry with [Mr. Farrohk-Shahab], threatens to kill [Mr. Farrohk-Shahab]” The prosecutor reviewed defendant’s subsequent assault on [Mr. Farrohk-Shahab] and noted, “The defendant repeatedly tells [Ms. Nazarian] he will kill [Mr. Farrohk-Shahab] the next time he sees him. [¶] . . . [D]efendant made repeated threats to kill [Mr. Farrohk-Shahab] over that course of time. Between March 18 - - of 2005 and November 5, 2005. And interestingly enough, [Mr. Farrohk-Shahab] is aware of these threats because he stays away from the house except to come over periodically when he knows that his stepfather is not there.” Mr. Farrohk-Shahab testified that he was afraid to go to the Nazarian residence when defendant was present. Mr. Farrohk-Shahab testified, “I feared for my life.” Mr. Farrohk-Shahab testified he had received some unspecified information that cause him to fear for his life. Ms. Nazarian also told Officer McDonald that if Mr. Farrohk-Shahab returned to the residence, defendant said, “I’ll kill him.” Moreover, on November 5, 2005, defendant yelled at Mr. Farrohk-Shahab after Ms. Nazarian had returned to the porch with her sweater. Mr. Farrohk-Shahab described defendant’s angry profane filled tirade, “Telling me he’ll kick my ass and he’ll kill me.” The prosecutor’s argument was a proper comment on the evidence presented at trial. No misconduct occurred.

(v) questioning Ms. Nazarian truthfulness

Defendant argues, without citation to the prosecutor's argument, that she repeatedly improperly attacked Ms. Nazarian's credibility. Defendant argues the deputy district attorney committed misconduct by insinuating that Ms. Nazarian lied about not seeing the knife in defendant's hand when he exited the house. In fact, the prosecutor acknowledged that it was "pitch black" in the front yard and neither Ms. Nazarian nor Mr. Farrohk-Shahab saw the knife when defendant came out of the house. Both Ms. Nazarian and Mr. Farrohk-Shahab testified they did not see the paring knife at the time defendant ran out of the house. Rather, the prosecutor argued that Ms. Nazarian denied seeing the large kitchen knife in defendant's hand while in the kitchen. Ms. Nazarian told Agent Lowrey that defendant had taken a large kitchen knife from the drawer. Ms. Nazarian stepped in front of defendant and said, "You will have to kill me before you kill my son." Only then did defendant put the large knife down. Defendant told Agent Lowrey and Sergeant Abrahamian that he had a knife during the assault. And after stabbing Mr. Farrohk-Shahab, defendant admitted returning to the house in order to get a larger knife. Again, the prosecutor's argument was fair comment on the evidence presented at trial. No misconduct occurred.

C. Denial of Mistrial and New Trial Motions

1. Factual and procedural background

Defendant argues that the trial court improperly denied his mistrial motion following the delayed grant of immunity for Ms. Nazarian. Also, defendant asserts the trial court improperly denied his new trial motion on the same grounds. Defendant further argues the denial of the mistrial and new trial motions violated his constitutional due process and a fair trial rights

As previously noted, after Ms. Nazarian testified for the prosecution over a two-day period, defense counsel suggested that she be granted immunity. At first, the prosecutor did not see any necessity of granting immunity to Ms. Nazarian. At that point, according to the prosecutor, Ms. Nazarian had denied any involvement in either encouraging Mr. Farrohk-Shahab to change his testimony or the offer of any bribes. However, ultimately Ms. Nazarian was granted immunity. Defense counsel then argued that immunity was improperly granted because: “[W]hat we are telling the jury is the prosecution and the court believe she lied. But she’s going to go on as a witness before you and you’re not going to get an explanation as to which lies she told.” The trial court responded: “[Y]ou’ve said repeatedly there’s been perjury committed. I don’t know that perjury has been committed. And I don’t think that immunizing the witness at this point gives the jury necessarily the impression that there’s been any perjury committed.” The prosecutor argued: “I believe parts of [Ms. Nazarian’s] testimony she’s been truthful and I think other parts of her testimony she has not been truthful. But I believe that that is within the purview of the jury to assess her credibility and determine from the information that they get from her, from all the witnesses presented by the People and the defense, to make their decision if they can come to one about [defendant’s] guilt.” Defendant argues, “[T]he trial court’s solution to the problem, i.e. to permit the prosecutor to grant immunity for perjury previously committed in the same case, and then to permit the trial to continue, was a process that violated the basic purpose or intent of the statutory immunity provisions, and denied him due process.”

At the time the trial court denied the mistrial motion, it noted: “The court did have an opportunity to fully consider the arguments presented by both sides. And the court does not find that the change in circumstance is sufficient to grant a motion for a mistrial. I’ll state my reasons for the record. [¶] I did ask the defense to proffer to the court what you would do differently if this had been an issue that’s anticipated and perhaps voir dire the jury differently. I accept that. That doesn’t mean that the jury that we have presently before this trial is in any way unfair and - - except for that potential immunity issue,

counsel for both sides had the full opportunity to voir dire the jury. [¶] Maybe you would have restructured the opening differently, but opening is not to be construed as argument by the jury. And perhaps there has been a shift in the defense strategy based on this new development, but that often happens in trial. Witnesses testify the way you don't expect and counsel for both sides have to shift their strategies and their subsequent arguments accordingly. This is no different than that type of situation. [¶] And none of these issues would cause a mistrial in this case. And I think that both sides should have anticipated this issue. Neither side did. The defense had the opportunity to review, I'm assuming, the discovery that's been provided that gave the defense information regarding [Ms.] Nazarian's prior statements pertaining to these issues that we've been discussing. And there's always a chance when she takes the stand, she'll testify consistent to those prior statements and admit to the conduct or there's always a chance that she will take the stand and testify inconsistent with the prior statements that the People provided in discovery. Each witness is the same. [¶] Every witness who has conflicting alliances, as I've indicated, there's always a chance that they'll take the [] and testify differently. The court did act, out of abundance of caution, because the prior inconsistent statement is something that essentially would be an admission to crime, dissuading a witness or obstruction of justice, so I think that that is still correct to act out of abundance of caution and give these people counsel so that they can evaluate what their individual options are. But it doesn't change the course of the trial. [¶] And each side should have anticipated that the witnesses may take the stand - - and because of the conflicting allegiance that they have, may testify differently than what you would expect. She's still on direct. There's still a full opportunity to cross-examine [Ms.] Nazarian. And nothing that has happened during the course of this trial can't be cured. [¶] I'll offer to counsel that if you wish to have the court instruct the jury a certain way, by all means submit the proposed curative instructions for the court to consider. But it's still early in the trial. It's an unanticipated bump in the road."

2. The motions could be properly denied

We review the trial court's denial of defendant's mistrial motion for abuse of discretion. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1029; *People v. Jablonski* (2006) 37 Cal.4th 774, 828-829; *People v. Ayala* (2000) 24 Cal.4th 243, 283-284; *People v. Lucero* (2000) 23 Cal.4th 692, 713-714; *People v. Williams, supra*, 16 Cal.4th at p. 251; *People v. Marshall* (1996) 13 Cal.4th 799, 839.) The Supreme Court has held: ““A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.”” (*People v. Hines* (1997) 15 Cal.4th 997, 1038, quoting *People v. Haskett* (1982) 30 Cal.3d 841, 854; see also *People v. Lewis and Oliver, supra*, 39 Cal.4th at p. 1029 [“A motion for mistrial should be granted only when a party's chances of receiving a fair trial have been irreparably damaged.”]; *People v. Stansbury, supra*, 4 Cal.4th at p. 1060; *People v. Cooper* (1991) 53 Cal.3d 771, 838-839.)

In this case, the trial court carefully considered the arguments of counsel and the potential effects of the grant of immunity. The trial court found the trial could resume without prejudice to defendant. In fact, Ms. Nazarian continued to deny the same things she denied during her testimony prior to the grant of immunity. Defense counsel had the opportunity to cross-examine not only Ms. Nazarian but also those who refuted her testimony. We agree with the Attorney General that even if a new trial had been held and Ms. Nazarian testified under a grant of immunity from the outset, the outcome would not have been different. Defendant's further contention that the grant of immunity was

invalid pursuant to section 1324⁵ is without merit. The grant of immunity did not protect Ms. Nazarian from any perjury committed during her post-immunity testimony. As to the new trial motion, we also review the ruling for abuse of discretion. (*People v. Hovarter* (2008) 44 Cal.4th 983, 999, fn. 4; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1252.) No abuse of discretion occurred when the new trial motion was decided for the foregoing reasons.

D. Court Security Fee

Following our request for further briefing, the parties agree that the trial court should have imposed a \$20 court security fee pursuant to section 1465.8, subdivision (a)(1). We agree. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Schoeb* (2005) 132 Cal.App.4th 861, 865-866.) The trial court is to personally insure the abstract of judgment is corrected to fully comport with the modifications we have ordered. (*People v. Acosta* (2002) 29 Cal.4th 105, 110, fn. 2; *People v. Chan* (2005) 128 Cal.App.4th 408, 425-426.)

⁵ Section 1324 states in relevant part: “In any felony proceeding . . . if a person refuses to answer a question . . . on the ground that he or she may be incriminated thereby, and if the district attorney of the county or any other prosecuting agency in writing requests the court, . . . to order that person to answer the question . . . , a judge shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced and the court shall order the question answered . . . unless it finds that to do so . . . could subject the witness to a criminal prosecution . . . But he or she may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer . . . in accordance with the order.”

IV. DISPOSITION

The judgment is modified to impose a Penal Code section 1465.8, subdivision (a)(1) court security fee. The superior court clerk is to prepare an amended abstract of judgment reflecting the imposition of the court security fee and forward it to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.